

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

OWEN W. BARNABY,

Plaintiff,

No. 22-cv-01146

v

HON. ROBERT J. JONKER

MICHIGAN STATE GOVERNMENT,
HON. GRETCHEN WHITMER GOVERNOR
OF MICHIGAN, HON. JENNIFER
GRANHOMLM GOVERNOR OF MICHIGAN,
HON. RICK SNYDER GOVERNOR OF
MICHIGAN, SUPREME COURT OF
MICHIGAN, STATE BAR OF MICHIGAN,
KENDELL S. ASBENSON (P81747),
MICHIGAN ATTORNEY GENERAL DANA
NESSEL, CITY OF BENTON HARBOR,
NILES CHARTER TOWNSHIP, BOARD OF
TRUSTEES OF NILES CHARTER
TOWNSHIP, BERRIEN COUNTY
GOVERNMENT, BERRIEN COUNTY
BOARD OF COMMISSIONERS, BRET
WITSKOWSKI TREASURER OF BERRIEN
COUNTY, KATHLEEN CULBERSON
NOTARY PUBLIC OF BERRIEN COUNTY,
TITLE & INSURANCE COMPANY(s),
ATTORNEY DONNA B. HOWARD,
ATTORNEY MCKINLEY R. ELLIOTT,
ATTORNEY JAMES MCGOVERN,
ATTORNEY JEFFREY R. HOLMSTROM,
HOLMSTROM LAW, PLC,

MAG. SALLY J. BERENS

Defendants.

**BRIEF IN SUPPORT OF JOINT STATE DEFENDANTS' AND THE CITY OF
BENTON HARBOR'S EMERGENCY MOTION TO EXTEND TIME FOR
RESPONSIVE MOTIONS -
EXPEDITED CONSIDERATION REQUESTED**

Rule 6(b)(1)(A) of the Federal Rules of Civil Procedure provides that the Court may, for good cause, grant an extension of time. Joint Defendants seek an extension of time to respond to Plaintiff's Motion to Amend the Complaint and to reply to Plaintiff's response to the pending Motion to Dismiss pending the Court's ruling on Plaintiff's objections to its Report and Recommendation for Dismissal.

Of significance, on December 14, 2022, Magistrate Sally Berens issued a Report and Recommendation for Dismissal due to lack of subject matter jurisdiction because Plaintiff's claims are barred by "claim and issue preclusion" and "devoid of merit." (ECF No. 16, Report and Recommendation, PageID.9-18.) Plaintiff's objections are due on or before January 25, 2023, pursuant to an extension granted by the Court. (ECF No. 47, Order, PageID.294.)

After the Report and Recommendation for Dismissal was issued, Plaintiff filed a Motion to Amend for Extension of Time to Amend his Second Amended Complaint. (ECF No. 37, Motion, PageID.266.) The deadline to respond to the motion is today, January 20, 2023.

Further, a Motion to Dismiss by State Defendants was filed on December 19, 2022. (ECF No. 19.) Plaintiff filed a response on January 17, 2023, for which a reply is currently due on January 31st. (ECF No. 50.) Bryan Beach has transferred within the Department of Attorney General and is no longer handling this matter, and Ms. Pendrick herein is filing a substitution of counsel. Finally, if the Court were to adopt the Report and Recommendation in its entirety, Plaintiff's complaint would be dismissed and the pending motions would be moot. In the interest of

conserving resources, responses to those motions should be delayed until a decision on the Report and Recommendation is made.

RELIEF REQUESTED

For these reasons, Joint Defendants herein seek an extension of time to respond to Plaintiff's Motion to Amend the Complaint until 14 days after the Court rules on the objections to its Report and Recommendation for Dismissal.

State Defendants and the City of Benton Harbor seek an extension to reply to Plaintiff's response to their Motion to Dismiss until 14 days after the Court rules on the objections to the Report and Recommendation for Dismissal.

Respectfully submitted,

/s/ Kimberly K. Pendrick

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/s/ Thomas J. Rheume, Jr. (w/ permission)

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Dated: January 20, 2023

CERTIFICATE OF SERVICE

I hereby certify that on January 20, 2023, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such to all counsel of record.

/s/ Kimberly K. Pendrick
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